

## Message Text

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ORIGIN TRSE-00

INFO OCT-01 EA-11 EB-11 ISO-00 L-03 H-03 SP-03 AID-20

NSC-07 RSC-01 CIEP-02 SS-20 STR-08 OMB-01 CEA-02

CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12

LAB-06 SIL-01 /131 R

66614

DRAFTED BY: TRSY/OS: MSFEINBERG/MDFIELD

APPROVED BY: EB/IFD/OMA: JKRIZAY

TRSY: NNGORDON(DRAFT)

TRSY: PATRICK(DRAFT)

EB/IFD/OMA: MMINNIES

EA/IMS: ADORNHEIM

L/T: WMCQUADE

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R 091955Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

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EO11652 NA

TAGS: EFIN

SUBJ: TAX TREATY

REF: JAKARTA 5134

1. RE ART 24(4): ALL RECENT UNITED STATES TREATIES  
CONTAIN A NON-DISCRIMINATION CLAUSE COVERING TAXES OF  
EVERY KIND IMPOSED AT ALL LEVELS OF GOVERNMENT. IN THE  
CASE OF THE INDONESIAN TREATY WE HAVE ALREADY AGREED TO  
LIMIT COVERAGE TO TAXES IMPOSED AT THE NATIONAL LEVEL.  
THE OECD MODEL CONVENTION CONTAINS SIMILAR LANGUAGE AND  
WE BELIEVE THAT NON-DISCRIMINATION IN TAX MATTERS IS ONE  
OF THE DESIRABLE FEATURES OF A TREATY NEGOTIATED ON A BI-  
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LATERAL BASIS. THIS PERMITS A COUNTRY TO DISCRIMINATE ON

TAXES BUT NOT WITH ITS TREATY PARTNERS. WE RECOGNIZE, HOWEVER, THE POLITICAL AND ECONOMIC PROBLEMS THAT CONCERN A DEVELOPING COUNTRY. WE WOULD LIKE TO REACH ACCOMMODATION WITH INDONESIA ON THIS QUESTION. WE WOULD PREFER LEAVING THE EXISTING LANGUAGE AND ADDING AN EXEMPTION FOR THE SPECIFIC EMPLOYMENT TAX FROM THE NON-DISCRIMINATION ARTICLE AND REQUEST THAT YOU EXPLORE THIS POSSIBILITY. IF THIS IS NOT ACCEPTABLE, WE SUGGEST MODIFYING ARTICLE 24 BY ADDING A NEW PARAGRAPH (5) PROVIDING THAT "IN THE CASE OF TAXES OTHER THAN THOSE COVERED BY THIS CONVENTION, PARAGRAPH (4) SHALL ENTER INTO FORCE FIVE YEARS FROM THE DATE ON WHICH THIS CONVENTION ENTERS INTO FORCE PURSUANT TO ARTICLE 30 (ENTRY INTO FORCE)." THIS APPROACH PERMITS THEM TO DEAL WITH PRESENT PROBLEMS AND TO ADOPT PROGRAMS IN THE FUTURE CONSISTENT WITH NORMAL BILATERAL ARRANGEMENTS AMONG TREATY PARTNERS.

2. RE ART. 7(7): PARA. (7) STATES RULE THAT SOURCE OF INCOME FROM SALE OF TANGIBLE PERSONAL PROPERTY IS PLACE WHERE SALE TAKES PLACE RATHER THAN, AS IN CASE OF REAL PROPERTY (ART. 7(4)), PLACE WHERE PROPERTY IS SITUATED. LOCATION OF REAL PROPERTY IS FIXED AND THEREFORE EASILY DETERMINABLE. PERSONAL PROPERTY MAY BE MOVED AND, THEREFORE, OBJECTIVE TEST IS NEEDED TO DETERMINE SOURCE OF INCOME FROM ITS SALE. "PLACE OF SALE" NOT DEFINED IN TREATY, AND, THEREFORE, UNDER ART. 3, IS DEFINED ACCORDING TO LAWS OF CONTRACTING STATE WHOSE TAX IS BEING DETERMINED OR, IF NECESSARY, BY COMPETENT AUTHORITY AGREEMENT. US DEFINES PLACE OF SALE AS PLACE WHERE TITLE TO PROPERTY PASSES. FOR EXAMPLE, IN SALE OF MERCHANDISE FROM US FIRM TO INDONESIAN FIRM, IF TITLE PASSED IN US, WITH INDONESIAN IMPORTER TAKING RESPONSIBILITY FOR FREIGHT, INSURANCE, ETC., AND RUNS RISK OF LOSS, INCOME IS US SOURCE. IF TITLE PASSES IN INDONESIA, INCOME ARISING FROM TRANSACTION WOULD BE INDONESIAN SOURCE.

3. RE ART. 30: FINAL PHRASE OF ART. 30, FOLLOWING PARENTHETICAL EXPRESSION, COULD BE MODIFIED TO READ: "ON OR AFTER JANUARY 1 OF THE YEAR IN WHICH THIS CONVENTION ENTERS INTO FORCE".

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4. RE LEGISLATIVE PROPOSALS: ON APRIL 10, 1973 ADMINISTRATION PROPOSED THREE CHANGES IN TAX TREATMENT OF FOREIGN SOURCE INCOME. NO ACTION HAS BEEN TAKEN, AND IT IS UNLIKELY THAT THEY WILL BE ADOPTED WITHOUT SUBSTANTIAL MODIFICATION BY CONGRESS:

A) UNITED STATES SHAREHOLDERS WOULD BE TAXED ON FUTURE UNDISTRIBUTED EARNINGS OF A CONTROLLED FOREIGN CORPORATION

ENGAGED IN MANUFACTURING OR PROCESSING ACTIVITIES WHERE THE CORPORATION MAKES NEW OR ADDITIONAL INVESTMENT AND IS ALLOWED A FOREIGN "TAX HOLIDAY" OR SIMILAR TAX INCENTIVES WITH RESPECT TO SUCH INVESTMENT.

B) UNITED STATES SHAREHOLDERS WOULD BE TAXED ON THE FUTURE UNDISTRIBUTED EARNINGS OF A CONTROLLED FOREIGN CORPORATION WHERE THE CORPORATION MAKES NEW OR ADDITIONAL FOREIGN INVESTMENT IN THE MANUFACTURING OR PROCESSING OF PRODUCTS EXPORTED TO THE UNITED STATES MARKET, IF THE INCOME FROM SUCH INVESTMENT IS SUBJECT TO FOREIGN CORPORATE TAX SIGNIFICANTLY LOWER THAN IN THE UNITED STATES.

C) WHERE A UNITED STATES TAXPAYER HAS DEDUCTED FOREIGN LOSSES AGAINST UNITED STATES INCOME, SUCH LOSSES WOULD BE TAKEN INTO ACCOUNT TO REDUCE THE AMOUNT OF FOREIGN TAX CREDIT CLAIMED BY SUCH TAXPAYER ON FOREIGN EARNINGS IN LATER YEARS.

D) TAX TREATIES WOULD BE USED TO EXEMPT INCENTIVES, FROM THE PRECEDING RULES ON A BILATERAL NEGOTIATED BASIS. ANY SUCH TREATY RECOGNITION OF FOREIGN TAX INCENTIVES WOULD BE CONTINGENT UPON THE EXISTENCE OF SATISFACTORY BILATERAL TAX, TRADE AND ECONOMIC RELATIONS WITH THE FOREIGN COUNTRY WHICH WOULD WARRANT THE EXTENSION OF AN INCENTIVE TO US INVESTORS.

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## Message Attributes

**Automatic Decaptioning:** X  
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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, TAX AGREEMENTS  
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**Draft Date:** 09 MAY 1974  
**Decaption Date:** 01 JAN 1960  
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**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GarlanWA  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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**Disposition History:** n/a  
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**Enclosure:** n/a  
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**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** TAX TREATY  
**TAGS:** EFIN, US, ID  
**To:** JAKARTA  
**Type:** TE  
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